IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 151 of 2000

WITH

CIVIL APPLICATION No 96 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION BANK OF INDIA

Versus

ELCON FINLEASE & INDUSTRIES LTD.

Appearance:

1. COMPANY PETITION No. 151 of 2000
   MR SS PANESAR for Petitioner No. 1
   MR UNMESH D SHUKLA for Respondent No. 1
   DR SONIA HURRA for Respondent No. 1
   MR RR GUPTA for Respondent No. 2
   NOTICE SERVED BY DS for Respondent No. 3-5
2. CIVIL APPLICATION No. 96 of 2000
   MR UNMESH D SHUKLA for Petitioner No. 1
   MR SS PANESAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 25/08/2004

ORAL JUDGEMENT

The petitioner - Union Bank of India has filed this petition under Section 433 (e) read with Section 434 of the Companies Act, 1956 for winding up of the respondent Company.

2. It is the case of the petitioner that on or about 21.12.1993, the respondent Company through its Directors approached the petitioner Bank for granting financial assistance by way of Cash Credit against hypothecation of various vehicles and other assets for development of their Lease Finance business. The petitioner Bank accordingly lent and advanced Cash Credit hypothecation of movable assets limit of Rs. 50 Lakhs to the said Company during the period of March, 1994. The respondent Company had executed and delivered a Demand Promissory Note, Letter of Continuity and Agreement of Hypothecation and Letter of Negative Lien all for Rs. 50 Lakhs dated 30.03.1994 in favour of the petitioner Bank. The respondent Bank has also acknowledged and admitted its liability for the outstanding as on 30.09.1995, 31.03.1996, 30.09.1996, 31.03.1997, 30.09.1997, 31.12.1997, 31.03.1998 and 30.09.1998 in favour of the petitioner Bank. The respondent Company has also acknowledged and admitted its liability for outstanding sum of Rs. 84,66,380.51ps. as on 30.06.1999 by passing resolution in the meeting of its Board of Directors held on 07.08.1999. The respondent Company has also issued balance confirmation letter dated 17.08.1999.

3. It is the case of the petitioner that the petitioner has issued several reminders to the respondent Company for payment of the outstanding dues. However, the respondent Company has not made repayment. On the contrary, the respondent Company has submitted the statements of hypothecated assets as on September, 1999 and March, 2000 respectively wherein the Company had shown the depreciated value of the hypothecated assets at Rs. 16,71,686/- and Rs. 5,32,008/- respectively. The petitioner, therefore, was of the view that the realisable value of the said hypothecated assets was practically very meagre to satisfy the huge debt due and payable to the petitioner. The petitioner, therefore, issued statutory notice on the respondent Company on 12.04.2000. Despite the service of the said statutory

notice, no payment was made by the respondent Company to the petitioner. The petitioner was, therefore, constrained to file the present petition before this Court in the month of May, 2002.

4. Mr. S.S. Panesar, learned advocate appearing for the petitioner has submitted that the respondent Company's financial position is very critical and the Company has lost its financial substratum and is not in a position to discharge its liabilities towards its Secured and Unsecured Creditors. The respondent Company has failed and neglected to pay its dues and the assets which were hypothecated to the Bank were frittered away by the respondent Company and it is not just and proper to allow the respondent Company to carry on its business activities.

5. This Court has passed an interim order on 01.06.2000 directing the respondent Company to pay the amount by way of rent/hire charges that may be received by the Company. The respondent Company was also restrained from dealing with its immovable properties till further order. The Court has passed further order on 07.08.2000 whereby the petition was admitted. However, the order of advertisement was deferred. This Court has passed further order on 10.08.2001 recording the statement of the learned advocate appearing on behalf of the respondent Company that some of the Creditors Banks have approached to D.R.T. and proposals for one time settlement were given to them. It was further stated before the Court that (i) State Bank of India, Ashram Road Branch, Ahmedabad, (ii) The Laxmi Vilas Bank, Ashram Road Branch, (iii) Bank of India, Ashram Road Branch, Ahmedabad and (iv) Bank of Baroda, Raipur Branch, Ahmedabad are the other Secured Creditors and those Banks are also to be directed to appear before this Court to express their views. The Court, therefore, issued notices to those Banks. On 18.03.2002, the Court has passed further order on the basis of the affidavit filed before the Court on 17.02.2002 wherein it was stated that the respondent Company has complied with the order of this Court by opening separate account with Indian Overseas Bank, Hansol Branch and deposited rent/hire charges received from the persons who are in possession of the vehicles. The Court has also directed the petitioner Bank to withdraw a sum of Rs. 4,37,306/which was deposited in the account. However, on 08.04.2002, the Court has passed further order recording the statement of Mr. S.S. Panesar, learned advocate appearing for the petitioner that the cheque which was handed over by the respondent Company has been returned

due to insufficient fund. In view of the said facts, the Court observed that necessary orders for publication of advertisement and appointment of provisional liquidator shall be passed on 11.04.2002 after hearing both the sides. However, on 11.04.2002, a request was made on behalf of the respondent Company that the matter may be adjourned as the respondent Company wants to challenge the order of admission in O.J. Appeal. The respondent Company has filed O.J. Appeal before the Division Bench of this Court and the same was also dismissed. These facts were recorded by this Court on 05.09.2002. Thereafter, this Court has passed the order on 24.04.2003 with regard to the publication of advertisement of admission of the petition in daily Newspapers, namely, English daily "The Times Of India" and Gujarati Daily "Gujarat Samachar" - both Ahmedabad editions. Accordingly, advertisement was published in the Newspapers and affidavit of publication was also filed before this Court. The matter has come up for final hearing on 19.08.2004.

6. On 19.08.2004, Dr. Sonia Hurra, learned advocate appearing for the respondent Company has submitted that the meeting of the Secured Creditors was going to be held and, therefore, a week's time may be granted and if no fruitful result is coming out from that meeting, the Court may pass appropriate order in the matter. The matter was, therefore, adjourned to 25.08.2004. On 25.08.2004, when the matter was called out, the learned advocate for the respondent Company has placed on record a letter dated 16.08.2004 addressed to Branch Manager, State Bank of Indore, copy addressed to the petitioner wherein it was stated that the Company has made a request to call for the meeting of the Secured Creditors as early as possible and reference of this Court's order dated 11.08.2004 was made in the said letter.

7. From the above development, it appears that the respondent Company has not made any sincere effort to make any concrete proposal with regard to its outstanding dues of the Secured Creditors and the respondent Company only wanted to buy time. The Court has, therefore, proceeded to pass the order in the matter.

8. After having heard learned advocate appearing for the petitioner and after having gone through the entire records and proceedings as well as the pleadings of the parties and the documents which are produced on the record of this Court, the Court is of the view that the respondent Company is not in a position to discharge its liabilities. The petitioner is not the only Secured

Creditor, but there are other Secured Creditors and the proceedings are pending against the respondent Company at various levels. The assets of the Company are not adequate to satisfy its liabilities and the financial substratum of the Company has gone down. The submissions made on behalf of the respondent Company either in their affidavit or at the time of hearing of this petition are not at all convincing one and the same do not inspire any confidence. It has also come on record that the respondent Company has disposed of its assets without discharging its liabilities and despite the fact that those assets were hypothecated to the Secured Creditors including the petitioner. In such a situation, it is not just and proper to allow such company to carry on its business and the appropriate remedy is to pass an order of winding up. Accordingly, the respondent Company is hereby ordered to be wound up. The Official Liquidator attached to this Court is appointed as the Liquidator of the Company and he is directed to take charge of the assets of the Company. The Official Liquidator, however, before taking inventory of the assets of the Company and before appointing any Security Guards, file his report before this Court and seek prior approval in this direction.

9. With this direction, this petition is allowed without any order as to costs.

10. In view of disposal of this petition, Civil Application No. 96 of 2000 does not survive and is accordingly disposed of.

Sd/-

[K.A. PUJ, J.]

#Savariya#

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